

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL A. WEISS, M.D.)	Civil Action No.
KATHY WEISS)	
M.W. (Child))	
D.W. (Child))	
B.W (Child))	
4676 Skyview Drive)	
Glenville, Pennsylvania 17329)	
)	
Plaintiffs,)	
)	
v.)	
)	
SURGICAL ANESTHESIA SERVICES, LLC)	
900 Circle 75 Parkway, Ste 1310)	
Atlanta, Georgia 30339)	
)	
and)	
)	
)	
JOE MCDONNELL)	
Plan Administrator)	
)	
Defendants.)	

COMPLAINT & DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This action for monetary and other relief is brought by Plaintiff, Michael A. Weiss, M.D. (hereinafter “PLAINTIFF”), to redress violations by Defendants, Surgical Anesthesia Services (hereinafter “SAS”) and Joe McDonnell, Plan Administrator, (hereinafter “McDonnell”) of rights secured by the laws of the United States.

II. JURISDICTION

2. This action is brought pursuant to the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001, et seq. as amended and the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”).

III. VENUE

3. All actions complained of herein took place within the jurisdiction of the United States Court for the Middle District of Pennsylvania as the place in which the claims arose, where the PLAINTIFF resides, and the place where SAS conducts business through a subsidiary, Surgical Anesthesia of Gettysburg, LLC (hereinafter “SAG”) which is a corporation with its principal place of business located at 250 Fame Avenue Suite 130, Hanover, Pennsylvania 17332.
4. PLAINTIFF served SAG as Chief of Anesthesiology before his termination from employment in January 13, 2017.
5. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. § 1391 (b).

IV. PARTIES

6. Plaintiff, Michael A. Weiss, M.D, is an adult male who currently resides at 4676 Skyview Drive, Glenville, York County, Pennsylvania 17329.
7. Plaintiff, Kathy Weiss, is a female adult whom currently resides at 4676 Skyview Drive, Glenville, York County, Pennsylvania 17329.
8. M.W. is a male child of Michael and Kathy Weiss residing with his parents.

9. D.W. is a female child of Michael and Kathy Weiss residing with her parents.

10.B.W. is a male child of Michael and Kathy Weiss residing with his parents.

11.Surgical Anesthesia Services, LLC (“SAS”), is a Georgia Limited Liability Company with its principal place of business located at 900 Circle 75 Parkway, Suite 1310, Atlanta, Georgia 30339.

12.Joe McDonnell, is an adult male who currently resides, upon information and belief, at 1904 Grenache Ln, Kennesaw Georgia 30152.

13.McDonnell is the Chief Financial Officer for SAS and the Plan Administrator for the SAS’ employee benefits plan.

V. FACTUAL BACKGROUND

14. On January 13, 2017, PLAINTIFF was terminated from his position with SAS/SAG.

15. Despite terminating him on January 13, 2017, SAS and McDonnell did not send PLAINTIFF timely notice and election to continue health benefits pursuant to Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”).

16.This notice was sent by counsel for SAS/SAG to counsel for PLAINTIFF by email dated June 2, 2017 (see attached documentation as PLAINTIFF’s EXHIBIT A).

17. The Notice was sent only after the PLAINTIFF repeatedly requested it be sent and the PLAINTIFF be given an explanation as to when it was mailed.

18. Counsel for SAS/SAG stated that the documents were forwarded to the PLAINTIFF by SAS on April 14, 2017.
19. However, PLAINTIFF never received said COBRA documentation until his counsel emailed him a copy on or about June 2, 2017 after receiving it from SAS/SAG counsel.
20. Under COBRA, PLAINTIFF should have been notified of his COBRA rights within thirty (30) days of his termination. 29 U.S.C. § 1166.
21. Despite terminating his employment on January 13, 2017, the SAS benefits Plan and Joe McDonnell, its Administrator, failed to notify PLAINTIFF of his COBRA rights until June 2, 2017.
22. Further, PLAINTIFF's family, as qualified beneficiaries under the plan, should also have received individualized notices and as such their respective rights were violated thereby.
23. As a result, the PLAINTIFF and his family incurred undue expenses for new health care costs, medical bills, as well as additional expenses.
24. PLAINTIFF is entitled to penalties, interest, costs, and attorney's fees as a result of this failure to follow the law.

COUNT 1
**PLAINTIFF'S CLAIMS FOR VIOLATION OF PROTECTED RIGHTS
UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT
(ERISA); CONSOLIDATED OMNIBUS BUDGET RECONCILIATION
ACT of 1985 (COBRA), 29 U.S.C. §§ 1001, et seq.**
AGAINST ALL DEFENDANTS

25. PLAINTIFF incorporates by reference the preceding paragraphs of this Complaint.

26. DEFENDANT, by and through its employees and agents, and DEFENDANT Joe McDonnell, individually, and in concert with each other, interfered with and violated the PLAINTIFF's rights under ERISA and COBRA.

27. DEFENDANTS' violation is demonstrated by its failure to supply the required notice timely under COBRA.

WHEREFORE, PLAINTIFF respectfully requests judgment in his favor and against all DEFENDANTS for penalties which are due under the law, medical bills incurred, expenses reimbursed by other alternative coverage, interest, costs, attorney's fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

COUNT 2
**PLAINTIFFS' CLAIMS FOR VIOLATION OF PROTECTED RIGHTS
UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT
(ERISA); CONSOLIDATED OMNIBUS BUDGET RECONCILIATION
ACT of 1985 (COBRA), 29 U.S.C. §§ 1001, et seq.**
AGAINST ALL DEFENDANTS

28. PLAINTIFF incorporates by reference the preceding paragraphs of this Complaint.

29. DEFENDANT, by and through its employees and agents, and DEFENDANT Joe McDonnell, individually, and in concert with each other, interfered with and violated PLAINTIFFS' Kathy Weiss', M.W., D.W., B.W.'s rights under ERISA and COBRA as qualified beneficiaries by failing to supply them with individualized notice of rights pursuant to COBRA.

30. DEFENDANTS' violation is demonstrated by its failure to supply the required notice timely under COBRA.

WHEREFORE, PLAINTIFF respectfully requests judgment in her favor, and for her children, collectively, and individually, and against all DEFENDANTS for penalties which are due under the law, medical bills incurred, expenses reimbursed by other alternative coverage, interest, costs, attorney's fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

Respectfully submitted,

DONHAM LAW

By: /s/ Jeremy A. Donham, Esquire
JEREMY A. DONHAM, ESQUIRE
State Bar #206980
P.O. Box 487
Dellslow, WV 26531
(717) 676-7749
(888) 370-5177 (FAX)
ATTORNEY FOR PLAINTIFF